

John Staines, Appellant.

Edward, Robert, Thomas, John,
William, and Sarah Maddocks, } Respondents.
Infants, by Robert Maddocks }
their Prochein Amy,

The Appellant's CASE.

Thomas Lord, late of Hampstead in the County of Middlesex, Gent. was in his Life-time possessed of, and entitled to, a considerable personal Estate; and the Appellant having married Alicia his Niece, he the said Thomas Lord had his Lodging, Board, and all sort of Necessaries provided for him at the Appellant's House and Expence, the last seven Years of his Life, the three last of which he was by Sickness confined to his Bed.

Tho. Lord's Will,
dated 23^d Nov.
1720.

The said Thomas Lord made his Last Will and Testament, and thereby *Imprim.* gave unto his Brother William Lord the Sum of Ten Pounds for and during his Life; and gave to his Niece Alicia Staines (Wife of John Staines, the Appellant) all the Estate which he should die possessed of or anyways interested in, either in Possession, Reversion or Remainder: And directed, that the Interest and Produce thereof should be for the sole Use and Benefit of his said Niece Alicia Staines, separate and apart from the said John Staines her Husband, or any Husband she might afterwards have; and that her Receipt, notwithstanding her Coverture with her then present Husband as aforesaid, or any Husband she might then after have, should be a sufficient Discharge for any Sums of Money to her paid. And after the Decease of his said Niece Alicia Staines, he gave all his said Estate to his Executrix (in Trust) That she should pay the Yearly Interest and Produce of his said Estate for the Maintenance and Education of such Child or Children as should be lawfully begotten, by the said John Staines, on the Body of the said Alicia Staines, until they attain their respective Ages following, viz. if Sons the Age of twenty one Years, and if Daughters their respective Ages of eighteen Years: And when they should attain such their respective Ages of twenty one Years and eighteen Years, that then his said Executrix should pay them their several Portions thereof Share and Share alike. And for want of such Issue, he gave all his Estate unto the Children of Sarah Maddocks, late Wife of Edward Maddocks, (of Fulbrooke in the County of Oxford, Maltster) lawfully begotten by the said Edward Maddocks on the Body of the said Sarah, Share and Share alike. And did thereby make and appoint the said Alicia Staines Residuary Legatee and sole Executrix of his said Last Will and Testament.

Tho. Lord died
20th Sept. 1723.

Thomas Lord soon after making the said Will died, and Alicia Staines proved the same in the Prerogative Court of Canterbury, and possessed herself of his personal Estate, paid his Debts, Legacies and Funeral Expences; and apprehended that, as sole Executrix and Residuary Legatee, she became well entitled to the Whole Residuum of the Testator's personal Estate.

Bill filed, Mich.
Term. 1723.

The Respondents, as the Children of Edward and Sarah Maddocks, by their next Friend, exhibited their Bill in the High Court of Chancery, against the Appellant and the said Alicia his Wife in her Life time, to have

have an Account of the Testator's personal Estate, and that the same might be secured for their Benefit.

Answer filed, 12th
Dec. 1723.

The Appellant and his Wife put in their Answers, disclosed the Value of the Testator's said Estate, which consisted of Stocks in the publick Funds, Leases for Years, and Debts due to the said Testator; and submitted to the Judgment of the Court, Whether, upon due Consideration of the said Will, the Respondents were entitled to any Part thereof, by Virtue of the Devise over in the said Will, to the Children of the said *Edward Maddocks*.

Decree, 5th May,
1724.

To which Answer the Respond. replied, and examined several Witnesses. The Cause was heard before his Honour the *Master of the Rolls*, who did not direct any Account to be taken of the said Testator's personal Estate; but was pleased to order, That the Appellant and his Wife should not transfer the Testator's Stocks, or assign his Leases, or receive in any of his Debts, without Application to the said Court for Leave so to do, whereupon such farther Order should be made as should be just.

Alicia Staines's Will,
dated 9th Octob.
1724.

Alicia Staines afterwards made her Will, and thereby, reciting the said *Thomas Lord's* Will, and that she was his Executrix and Residuary Legatee, bequeathed 490 *l.* South-Sea Stock, and 490 *l.* South-Sea Annuity Stock, which stood in the Books of the Company in the Name of the said *Thomas Lord*, to *Thomas Parsons* of *London* (in Trust) to permit the Appellant to receive the Dividends and Profits thereof for his Life. And after his Decease (in Trust) for the Respondents equally to be divided between them; provided they would not in Law or Equity any ways molest or interrupt the Appellant, under Colour of the said *Thomas Lord's* Will: and made the Appellant Executor.

Alicia Staines died
11th June, 1726.

Sometime afterwards the said *Alicia Staines* died, whereby the said Suit and Proceedings being abated,

Bill of Revivor,
3d Feb. 1726.

The Respondents, by their next Friend, exhibited their Bill of Revivor against the Appellant; praying, that the said Proceedings might be revived, and that the Appellant might shew Cause, why he should not account for and deliver unto them the personal Estate of the said *Thomas Lord*.

Answer, 14th Mar.
1726.

The Appellant put in his Answer, and thereby admitted the Will of the said *Thomas Lord*, mentioned in the Will of *Alicia*, and insisted upon having the Benefit of the Trusts directed by the said *Alicia's* Will.

Cause heard, 17th
May, 1727.

The Cause being revived the same was heard upon Bill and Answer before his Honour the *Master of the Rolls*, who was pleased to decree, that the Appellant should come to an Account before Mr. *Eld*, one of the Masters of the Court, for so much of the said Testator's personal Estate as came to his Hands, or to the Hands of *Alicia Staines*, his said Wife deceas'd, or to the Hands of any Person, for their or either of their use; and that he should produce all Books and Papers relating thereto, upon Oath, and be examined upon Interrogatories as the Master should direct; and in taking such Account the Master was to make the Appellant all just Allowances.

Decree upon the Ap-
peal to the Lord
Chancellor, Mich.
Term. 1727.

The Appellant appealed from the said Decree, to the Right Honourable the Lord *Hugh Chancellor*, and the Cause coming on to be heard before his Lordship, his Lordship was pleased to affirm the said Decree.

The Appellant appealed from the said Decree to your Lordships, who

on hearing such Appeal on the 30th of April 1728. were pleased to order, That the said Decree should, tho' varied as to the manner in which the said Account was to be taken, by leaving out of the said Decree these

Decree of the House
of Lords, 30th of
April, 1728.

Words, viz. [*is come to his Hands or to the Hands of his late Wife, or to the Use of any other Person, for his, their, or either of their Use*] and instead thereof inserting these Words [*came at any time to his Hands, or to the Hands of any other Person for his Use*]: And also for what of the Testator's Estate came to, or was in the Hands of, his late Wife *Alicia Staines*, or to the Hands of any other Person for her Use since the 5th of May, 1724. or at any time thereafter. And that an Account be likewise taken of what of the Testator's personal Estate came to the Hands of the said *Alicia*, after the Death of the said Testator to the said 5th of May, 1724. which was not paid or delivered over by her to her Husband, and what should be found to be due from her, should be paid by the Defendant, her Executor, out of Assets, and be applied in the same manner, as is by the said Decree afterwards directed, concerning the said Testator's personal Estate that shou'd appear to be in the said Appellant's Hands; and if he did not

not admit Assets, then an Account was to be taken of what Assets came to his Hands; and, as far as it should appear he had Assets, he was to satisfy the said Demand in a Course of Administration.]

Report, 12th June, 1729.

With your Lordship's Variation of the said Decree, the Appellant attended the said Master, who made his Report and certify'd, that the Testator had lodg'd and boarded with the Appellant for about Seven Years, but that the Appellant had received the Income of the said Testator's Estate during that time, which he thought fit to set again his Lodging, Board and Attendance, and therefore made your Petitioner no Allowance for the same; and also certify'd, that the Sum of 200*l.* due on two South-Sea Bonds of 100*l.* each, were receiv'd by the Appellant after the said *Thomas Lord's* Death, viz. 4th Jan. 1723. with which, and the Interest of the said Sum, from the Death of the Appellant's late Wife, to the 11th of June, 1729. he was pleas'd to charge the Appellant; and the said Master refusing to allow the Appellant several other Sums of Money, to which he apprehended he had just Pretensions, the Appellant took Exceptions to the said Report, and the Substance of the Appellant's 1st, 2d, 5th, 6th and 7th Exceptions were as follows.

Exceptions to the Report.

1st, 5th and 6th Exceptions. For that the said Master by his said Report did not make the Appellant any Allowance for the Lodging, Board and Attendance of the said Testator *Thomas Lord*, but was pleas'd to set the said Testator's Income of his Estate, pretended to be receiv'd by the Appellant to his own Use, against the same.

2d. For that the said Master charged the said Appellant with the Money receiv'd on the said Two South-Sea Bonds and Interest.

7th Exception. For that the said Master did not make the Appellant an Allowance of 22*l.* 10*s.* paid by him to *William Lord*, the said Testator's Brother, upon account of an Annuity given to him by the said Testator's Will: Nor did allow the Sum of 20*l.* laid out in Mourning for the Appellant and his late Wife: Nor the Sums that the Appellant paid to Physicians and Apothecaries upon the said Testator's account during his Illness.

Exceptions argued, 14th Nov. last.

The said Exceptions came on to be argued before the Lord High-Chancellor, and his Lordship was pleas'd to order that the same should be over-ruled, and that the Appellant should pay the Costs of this Suit since your Lordships Decree. From which Order, as to the over-ruling the said 1st, 2d, 5th, 6th and 7th Exceptions and Costs, the Appellant hath humbly appealed to your Lordships, and apprehends that the same ought so far to be revers'd, for the following, among many other, Reasons.

Reason.

First, As to the 1st, 5th and 6th Exceptions. For that it is admitted that the Testator had his Lodging, Board and Attendance at the Appellant's House and at his Expence, in a manner more than suitable to his Degree, which makes it incumbent upon the Respondents to prove a Satisfaction made for the same; and as it is not in Proof in the Cause, that the Appellant or his Wife receiv'd any part of his Estate, otherwise than as Agents for him; but on the contrary, 'tis fully in proof that the Appellant, when he had receiv'd the said Testator's Money, us'd constantly to pay it immediately into his own Hands; and also, that the said Testator us'd always to keep his own Money, 'tis reasonable that the Appellant shou'd receive a real, and not an imaginary Satisfaction for the Testator's Maintenance, especially since he left Assets to the Value of or upwards.

As to the said 2d Exception. The said Appellant humbly conceives, that he ought not to be charged with the Money receiv'd on the said Two Bonds and the Interest for the same, for that, by the Variation which your Lordships were pleas'd to make in the said Decree in his Favour, he was to be responsible out of his own Estate for such part only of the personal Estate as came to his Hands, or to the Hands of any other Person for his use, or which came to the Hands of his Wife since the 5th of May, 1724. and in regard it appears, by the Proofs in the said Cause, that the said 200*l.* was receiv'd by him only as Agent for his Wife before the 5th of May, 1724. That the same was paid by the South-Sea Company in a Bank-Note, which was deliver'd by the Appellant to his said late Wife (who was then very much indispos'd) upon the very Day on which he receiv'd the same, and that the same or any Part thereof never afterwards came to the Appellant's Hands or Use. The Appellant humbly hopes that a reasonable, and not a meer literal Construction shall be put upon

upon your Lordships said Decree, and that therefore as the Money receiv'd on the said Bonds never came to the Use of the Appellant, so he ought not to be accountable for the same.

As to the 7th Exception. It appears in Proof in the Cause, that the Appellant paid the Sum of 22*l.* 10*s.* upon the account in the said Exception mentioned; and as to the other Demands in the said Exception, the same are sufficiently supported as he conceives by the Evidence in the Cause.

Wherefore, and for many other Reasons, the Appellant humbly hopes that so much of the said Order of the 14th of Nov. last as is hereby complained of shall be reversed, and that the Appellant shall have the said Allowances in his Account, or such other Relief as shall appear to your Lordships to be just and equitable.

J. WILLES.
D. RYDER.

John Staines, *Appellant.*

Edward, Robert, Thomas, John, William,
and Sarah Maddocks, } *Respondents*
Infants, by Robert
Maddocks their Pro-
chein Amy,

The Appellant's CASE.

*To be Heard at the Bar of the House
of LORDS, on Thursday the
19th of February, 1729.*



